

AGREEMENT

WITNESS this Agreement dated and effective this ___ day of November, 2008, by and between WEST PACE, LLC, an Alabama limited liability company (“West Pace”), and the STATE OF ALABAMA, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, STATE PARKS DIVISION, acting by and through its Commissioner (hereinafter referred to as "State of Alabama"):

Whereas, the State of Alabama is the owner and manager of that certain real property located in Lee County, Alabama, commonly known as Shell Toomer Parkway, and more particularly described on Exhibit A, attached hereto (the “Parkway”); and

Whereas, West Pace owns a parcel or parcels of real property in Lee County, Alabama, which are adjacent to and adjoin the Parkway; and

Whereas, the State of Alabama is the owner and manager of Chewacla State Park, located in Lee County, Alabama; and

Whereas, West Pace has applied to the State of Alabama for three separate driveway access easements over and across the Parkway, one of which has been granted on a temporary basis by instrument recorded at Deed Book 2336, Page 272, in the Office of the Judge of Probate for Lee County, Alabama; and

Whereas, the State of Alabama and West Pace are presently parties to litigation concerning the aforesaid driveway access easements (the “Easements”) and desire to resolve such litigation without further expense and delay; now, therefore,

In consideration for Ten Dollars (\$10.00) and other monetary and non-monetary consideration, and in consideration for the mutual promises and covenants made herein, the receipt and sufficiency of which are hereby conclusively acknowledged;

IT IS AGREED AS FOLLOWS:

1. The State of Alabama does hereby grant the two pending West Pace driveway access easement applications in the form attached hereto as Exhibit B, subject to modification based upon recommendations from the Alabama Department of Transportation concerning road design standards.
2. The State of Alabama and West Pace do hereby execute an amendment to the recorded temporary easement in the form attached hereto as Exhibit C, subject to later modification based upon any recommendations received from the Alabama Department of Transportation concerning road design standards.

3. The State of Alabama shall use its best efforts to expedite review of the West Pace easement applications by the Alabama Department of Transportation.
4. Provided the easement modifications recommended by the Alabama Department of Transportation do not make the construction or use of such modified easements commercially unreasonable, West Pace agrees to:
 - a. Build or cause to be built at no expense to the State of Alabama, three structures within Chewacla State Park in accordance with the plans and specifications which are attached hereto as Exhibit D, and in accordance with the usual and customary procedures and requirements applicable to construction of similar structures in State Parks in Alabama. West Pace shall commence construction of one structure selected by the State of Alabama during calendar year 2009, and one structure selected by the State of Alabama during each of the two successive calendar years. The order of construction of the structures shall be determined by the State of Alabama. There shall be no material change from the attached drawings in the design or materials to be used in the structures when formal construction plans are released by the State of Alabama. West Pace shall not bear any of the expense of preparation of such construction plans, and shall not be obligated to commence construction on any structure until such construction plans are released for said structure. West Pace shall not be required to build or provide any water, sewer, or septic systems for any such structures; and
 - b. In the event that the State of Alabama, or any of its agencies or officers acting in their official or individual capacities, is made a defendant in any lawsuit which challenges the legality of the acts taken by the State of Alabama pursuant to this Agreement, or the validity or permanence of the easements granted to West Pace pursuant to this Agreement, then West Pace agrees to provide and compensate legal counsel to represent the State of Alabama in any such lawsuit, subject to the approval and appointment of said legal counsel by the Attorney General of the State of Alabama.; and
 - c. Indemnify the State of Alabama against any claim for reimbursement of the United States Government of the City of Auburn for any portion of Federal Funds or City Funds used for construction the existing bicycle path in the Parkway which results directly from the construction or use of the easements granted to West Pace. West Pace agrees to use its best efforts to protect and enhance said bicycle trail.
5. In consideration of the value of the covenants and indemnifications given by West Pace in Paragraph 4 of this Agreement, the State of Alabama does hereby waive the usual and customary fees charged for access easement applications as to the two easements described in Paragraph 1 of this Agreement, and does accept such covenants and indemnifications in lieu of payment of said fees.

6. Upon the execution of all three final and permanent Easements granted to West Pace in accordance with the foregoing, West Pace and the State of Alabama, mutually agree to dismiss all of their claims and counterclaims, with prejudice, which have been made or are pending in that certain litigation styled as *West Pace, LLC, v Lawley, et al.*, Montgomery County, Alabama, Case No. CV-2008-000572.00.
7. It is the intent of the parties, and a condition precedent to each party's performance obligations hereunder, that the terms and substance of this Agreement shall remain strictly confidential until execution of all three final and permanent Easements granted to West Pace, except where disclosure of same is compelled by operation of law.
8. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof notwithstanding any prior written or verbal agreements. This Agreement may not be amended or modified except by a written instrument executed by all of the parties. This Agreement is made within and shall be governed by the law and statutes of the State of Alabama.

STATE OF ALABAMA

WEST PACE, LLC, an Alabama limited
liability company

Department of Conservation
and Natural Resources

M. Barnett Lawley, Commissioner

Thomas M. Hayley, Managing Member

APPROVED:

ATTEST:

Bob Riley, Governor of Alabama

Beth Chapman, Secretary of State

APPROVED:

Troy King, Attorney General of Alabama

Schedule of Exhibits

- A. Legal Description of Shell Toomer Parkway
- B. Form of Additional Driveway Easements
- C. Amendment to Recorded Temporary Driveway Easement
- D. Plans and Specifications of Chewacla State Park Structures to be Built